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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

In re:

CHU H. KWON,¹

Debtor.

Chapter 11

Case No. 19-44290 (ESS)

Case No. 19-44263 (ESS)

Case No. 19-44264 (ESS)

Case No. 19-44265 (ESS)

Jointly Administered

TO THE HONORABLE ELIZABETH S. STONG
UNITE STATES BANKRUPTCY JUDGE:

**DEBTOR'S LIMITED OBJECTIONS TO CONFIRMATION OF THE PLAN OF
REORGANIZATION OF CREDITOR 5TH AVENUE MIXED USE LLC**

Chu H. Kwon and the affiliated debtors and debtors-in-possession (collectively, the “Debtors”), by and through their undersigned counsel, Windels Marx Lane & Mittendorf, LLP (“Windels Marx”), for their limited objections to final approval of the Disclosure Statement, dated January 14, 2020 (the “Disclosure Statement”), and confirmation of the Plan of Reorganization, dated January 14, 2020 (the “Plan”), of 5th Avenue Mixed Use, LLC (the “Secured Creditor”), respectfully state as follows:

¹ The Debtors in these chapter 11 cases (collectively, the “**Debtor**”), along with the last four digits of each Debtor’s federal taxpayer-identification number are: 4811 Associates LLC (9576), 5505 Associates LLC (9596), and 5507 Associates LLC (9544).

PRELIMINARY STATEMENT

1. The purpose of this objection is not to litigate confirmation matters prematurely, such as the feasibility of the Plan before the Debtors have had an opportunity to file a competing Chapter 11 Plan of Reorganization. These areas are fact intensive and best addressed at the hearing on confirmation when actual evidence can be presented in support of competing Chapter 11 Plans of Reorganization.

2. The Debtors request that the Court adjourn approval of the Disclosure Statement and confirmation of the Plan for three (3) months pending the Court's approval of a loan to the Debtors in the total amount of \$5,500,000.00 (the "Loan") from an investor who has agreed in principal to enter into a Joint Venture Agreement ("JV Agreement") with the Debtors.

3. The parties are in the process of negotiating the terms of the Loan and the JV Agreement, which terms will be incorporated into the Debtors competing Chapter 11 Plan of Reorganization.

4. The Debtors' competing Chapter 11 Plan of Reorganization will seek to maximize the recovery for all interest holders and serve the rehabilitative purposes of Chapter 11.

SUMMARY OF RELEVANT FACTS

5. On October 11, 2018, the Debtors executed a Mortgage Consolidation and Modification Agreement, dated October 11, 2018 (the "Mortgage") in the principal amount of Four Million Nine Hundred Thousand and 00/100 (\$4,9000.00) Dollars, which was secured by a certain Pledge and Security Agreements (the "Pledge Agreements"), executed by the Debtor, Chu H. Kwon (the "Debtor"), as the pledgor, pledging his membership interests in each of the affiliated debtors, 4811 Associates, LLC ("4811 Associates") and 5505 Associates LLC ("5505 Associates") and 5507 Associates, LLC ("5507 Associates", and together with 4811 Associates and 5505 Associates, each hereinafter, referred to as the "Affiliated Debtor" or collectively, the "Affiliated Debtors").

6. The Affiliated Debtors defaulted on their obligations under the Mortgage. Similarly, the Debtor defaulted on his obligations under the Mortgage, Pledge Agreements, Personal Guaranties and related loan documents.

7. On the July 11, 2019², the Affiliated Debtors filed Chapter 11 Bankruptcy Petitions in the United States Bankruptcy Court for the Eastern District of New York, Case Nos. 19-44263-ess (In re: 4811 Associates) and 19-44264-ess (In re: 5505 Associates).

8. On July 12, 2019, the Debtor filed a Chapter 11 Bankruptcy Petition in the United States Bankruptcy Court for the Eastern District of New York, Case No. 19-44290-ess.

9. By Order of the Court, dated October 25, 2019, the Chapter 11 cases were consolidated for procedural purposes only and are being jointly administered under the above-captioned case in accordance with the provisions of Bankruptcy Rule 1015.

II.

The Debtor's History

10. In 2012, the Debtor was gifted the membership interests of the Affiliated Entities by his father. Particularly, the Debtor was gifted One Hundred (100%) Percent of the membership interests in 5505 Associates, One Hundred (100%) Percent of the membership interests in 5507 Associates and Eighty Six (86%) Percent of the membership interests in 4811 Associates.

III

The Debtor's Business

11. Affiliated Debtor, 4811 Associates is the fee simple owner of the real property located at 4811 5th Ave., Brooklyn, New York 11220 (the "4811 Property").

² For purposes of this Objection, July 11, 2019 and July 12, 2019, are hereinafter collectively referred to as the "Commencement Date".

12. The 4811 Property consists of six (6) rent stabilized apartments and two (2) commercial units on the ground floor.

13. The 4811 Property has a monthly rent roll of \$18,078.86 for a total annual rent roll of \$216,946.32.

14. Affiliated Debtor, 5505 Associates is the fee simple owner of the real property located at 5505 5th Ave., Brooklyn, New York 11220 (the “5505 Property”)

15. The 5505 Property consists of six (6) rent stabilized apartments and two (2) commercial units on the ground floor.

16. The 5505 Property has a monthly rent roll of \$14,737.16 for a total annual rent roll of \$176,845.92.

17. Affiliated Debtor, 5507 Associates is the fee simple owner of the real property located at 5507 5th Ave., Brooklyn, New York 11220 (the “5507 Property”).

18. The 5507 Property consists of six (6) rent stabilized apartments and two (2) commercial units on the ground floor.

19. The 5507 Property has a monthly rent roll of \$15,706.86 for a total annual rent roll of \$188,482.32.

20. The Affiliated Debtors have a combined annual rent roll of \$582,274.56 (“Combined Rent Roll”).

21. As part of the Debtors’ competing Chapter 11 Plan, the Debtor will engage the Secured Creditor in an attempt to negotiate a restructuring of its debt obligations, including the Mortgage, which is secured by the Pledge Agreements, executed by the Debtor, pledging the membership interests of the Debtor and the Affiliated Debtors.

22. The Debtors will also seek to use proceeds from the Combined Rent Roll to pay the arrears over the term of a competing Chapter 11 Plan and pay its post-Petition obligations, including the Mortgage.

IV

Debtors' Default

23. After defaulting on the Mortgage, the Debtors faced a systemic problem of undercapitalization and were burdened with a debt-load vastly disproportionate to their ability to service such debt. As currently constituted, the interest rate of the Mortgage is too high and requires further scrutiny from the Court.

24. From the date of the Mortgage to the Commencement Date, the principal balance of the Mortgage ballooned from \$4,900,000.00 to \$5,990,681.99. In less than one year, the Debtors incurred interest and late fees on the Mortgage in excess of \$1,000,000.00. A copy of Proof of Claim No. 2 with an Itemized Statement of interest and fees is annexed hereto as **Exhibit "A"**.

25. From the Commencement Date to March 1, 2020, the Mortgage has ballooned from \$5,990,681.99 to \$6,904,196.96³ making it difficult for the Debtors to pay the Mortgage. Without a white knight, or third-party investor willing to fund a plan, the Debtors were previously unable to propose a competing Chapter 11 Plan. Now that a third-party investor has agreed, in principal, to lend the Debtors \$5,500,000.00 in exchange for Joint Ownership of the properties, the Debtors are making good faith efforts to prepare and file a competing Chapter 11 Plan.

26. Accordingly, the Debtors should be given an opportunity to file a competing Chapter 11 Plan.

³ Through and including March 31, 2020.

WHEREFORE, the Debtor, Chu H. Kwon and the affiliated debtors, 4811 Associates LLC, 5505 Associates LLC and 5507 Associates LLC respectfully requests that the Court deny confirmation of the Plan until the Debtors have had an opportunity to file a competing Chapter 11 Plan, and grant such other and further relief as is just and proper.

Dated: New York, New York
February 28, 2020

WINDELS MARX LANE & MITTENDORF, LLP

By: /s/ Charles E. Simpson
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